

New Jersey Division on Civil Rights



Director's Orders Compendium

2003

CIVIL  RIGHTS

JAMES E. MCGREEVEY
Governor

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Welcome to the NJ Division on Civil Rights Director's Orders Compendium for Calendar Year 2003.

In an effort to more fully inform you of some of the Division's actions, initiatives and other activities, Assistant Director Gary LoCassio has prepared this overview of all the Director's Orders from the past 12 months.

The following pages illustrate how the Division on Civil Rights has worked to further the directives and positive efforts of Governor James E. McGreevey and Attorney General Peter C. Harvey in combating unlawful discrimination in this State.

I hope you find this review both interesting and informative.

J. Frank Vespa-Papaleo

Director

New Jersey Division on Civil Rights

VALSSELIN DITTRICH v. 931 PARK AVENUE CONDOMINIUM ASSOCIATION

Complainant alleged that the president of the 931 Park Avenue Condominium Association denied him access to certain Association records that Complainant was entitled to examine, and that the president made disparaging remarks about Complainant's national origin (Bulgarian).

Following an administrative hearing, the Administrative Law Judge (ALJ) issued an initial decision concluding that Complainant established by a preponderance of the evidence that Respondent subjected him to unlawful discrimination. The Director agreed, concluding that any statute of limitations defense available to Respondent was waived because Respondent failed to assert it at any

stage of the proceedings. Furthermore, relying on the ALJ's credibility determinations of the parties and their witnesses, the Director concurred that the evidence established by a preponderance of the evidence that Respondent discriminated against Complainant because of his national origin, in violation of the LAD.

Finally, the Director concurred with the ALJ that although recent amendments to the LAD permit a penalty of up to \$10,000.00, a penalty of \$2,000.00 and an award of \$500 to Complainant for emotional distress were appropriate in this case. Complainant has appealed this decision.

DCR Docket No.:
HJ5NW-05341**OAL Docket No.:**
CRT 11089-99**D.O. Issued:**
February 2003**VITO ALBANESE, SR., GUARDIAN AD LITEM FOR VITO ALBANESE, JR. v. MORNINGSIDE GROUP HOME**

This matter arose from a complaint filed on July 30, 2000 alleging that Respondent unlawfully discriminated against Complainant's son by refusing to reasonably accommodate the child's disabilities in the group home in which he resided. Complainant's child was orthopedically and mentally impaired. The child's last day of residence in Respondent's facility was in April 1997.

After the matter was transmitted to the Office of Administrative Law for an administrative hearing, Respondent filed a motion to dismiss the complaint on the ground that the claim was not timely filed with the Division. On January 13, 2003, the Honorable Solomon A. Metzger, ALJ, issued an initial decision granting Respondent's motion to dismiss. On February 21, 2003, the Director issued an order concurring with the ALJ that the

complaint was filed beyond the statute of limitations for filing an LAD complaint with the Division. However, the Director modified the initial decision by noting that the ALJ erroneously applied the two year statute of limitations that governs complaints filed in the Superior Court of New Jersey, instead of the 180-day statute of limitations for filing complaints with the Division. N.J.S.A. 10:5-18.

DCR Docket No.:
PD12WB-02672**OAL Docket No.:**
CRT 6676-02**D.O. Issued:**
February 2003

JOSEPH BUTTIGLIERI v. NEW JERSEY HIGHWAY AUTHORITY

Complainant filed a verified complaint with the Division alleging that Respondent discriminated against him when it refused to hire him to a permanent Toll Collector, Class I position because of his physical disability (surgical removal of a herniated disc). On February 20, 2003, the ALJ issued an initial decision dismissing the complaint because the record established Complainant's continued willful and deliberate disregard of discovery demands and a subsequent ALJ order compelling discovery. The Director agreed that Complainant demonstrated a pattern of non-compliance with Respondent's discovery requests and the ALJ's discovery order. Accordingly, the Director adopted the ALJ's decision that dismissal of the verified complaint was appropriate.

DCR Docket No.:
EM25HL-42220-E**OAL Docket No.:**
CRT 8537-01**D.O. Issued:**
March 2003**JOANNE L. SERVAIS v. TOWNSHIP OF FAIRFIELD**

Complainant filed a verified complaint with the Division alleging that Respondent denied her reappointment to her prior position as municipal housing/zoning officer based on her race (Caucasian). Following an administrative hearing, the ALJ issued an initial decision in Complainant's favor awarding her back pay, interest, damages for pain and humiliation, and assessing a statutory penalty. The ALJ determined that Complainant presented sufficient direct and circumstantial evidence to establish that Respondent was motivated by race in appointing a Black male to the position instead of reappointing Complainant. In evaluating the circumstantial evidence, the ALJ noted that although a more rigorous standard is required to establish a reverse discrimination case, Complainant met that heightened burden.

In his April 23, 2003 order, the Director agreed with the ALJ's determination that Complainant established, both by direct and circumstantial evidence, that Respondent unlawfully discriminated against her based on her race. The Director adopted the ALJ's back pay award, but concluded that the evidence, including the testimony that she suffered physical manifestations of emotional distress which required medical treatment and prescription medication, warranted increasing the emotional distress damages to \$7,500. The Director also concluded that the evidence warranted a statutory penalty of \$7,500. Respondent has appealed the Director's decision.

DCR Docket No.:
EF05RM-40805-E**OAL Docket No.:**
CRT 2483-01**D.O. Issued:**
April 2003

ARTHUR G. MATTEI v. NJ ADMINISTRATIVE OFFICE OF THE COURTS

Complainant filed a verified complaint with the Division alleging that the New Jersey Administrative Office of the Courts (Respondent) subjected him to unlawful age discrimination when it rejected his candidacy for the position of Trial Court Administrator (TCA) for the Mercer Vicinage. Complainant was 57 years old at the time of his application.

On February 20, 2003, the Honorable Jeff S. Masin, ALJ, issued an initial decision dismissing the complaint. In his order issued on May 27, 2003, the Director adopted the ALJ's conclusion that Complainant failed to demonstrate by a preponderance of the evidence that Respondent denied him the TCA position because of his age.

Complainant raised several exceptions to the ALJ's determination. First, Complainant asserted that the ALJ improperly refused to permit his attorney to cross-examine two

Judges who were members of Respondent's selection panel. The issue involved communications the judges had with Deputy Attorneys General and an Assistant Attorney General in preparation for the hearing. The Director adopted the ALJ's conclusion that these discussions were protected by the attorney-client privilege. Secondly, the Director addressed Complainant's contention that he was entitled to a spoliation inference because Respondent intentionally or inadvertently destroyed interview notes and notes of committee interview meetings. The Director concurred with the ALJ's determination that no spoliation inference was warranted, and even if such an adverse inference were supported, granting such an inference would not be sufficient to outweigh the credible evidence in the record that Respondent declined to hire Complainant for legitimate non-discriminatory reasons. Complainant has appealed this decision.

DCR Docket No.:
EL11AG-45749E**OAL Docket No.:**
CRT 04375-00S**D.O. Issued:**
May 2003**AMBURG & SCULLY v. SOUTHERN OCEAN NURSING AND REHABILITATION CENTER**

Both complainants alleged that Respondent subjected them to unlawful discrimination based on sex (pregnancy) in violation of the LAD. Ms. Amburg contended that Respondent forced her to go on a medical leave of absence when she became pregnant despite her physician's medical clearance that indicated she could continue working. In addition, Ms. Amburg alleged that Respondent terminated her after her twelve week leave had elapsed. Ms. Scully contended that she was medically restricted to lifting 40 lbs. due to her pregnancy and Respondent refused to accommodate her. Complainant alleged that Respondent terminated her even though she was ready, willing and able to perform the essential functions of her job.

Several hearings were scheduled and

adjourned pending efforts to settle these matters. Ultimately, the ALJ issued an initial decision dismissing both complaints for failure to prosecute, noting the parties failed to submit draft settlement agreements as promised.

The Director rejected the ALJ's initial decision, finding that under the circumstances of this case the sanction imposed -dismissal of the claims- was disproportionate to the complainants' transgression. The Director determined that the parties were in the process of settlement, but were hampered by a bankruptcy filing and review of the settlement by all the parties. The Director reversed the ALJ's decision and held the matter for thirty (30) days to allow the parties an opportunity to settle. The matters were ultimately settled.

DCR Docket No.:
EC08SB-40083;
EQ30SB-42250**OAL Docket No.:**
CRT 6724-99;
CRT 6677-01
(Consolidated)**D.O. Issued:**
September 2003

CATHERINE GREFFE v. HACKETTSTOWN AUTO PARTS, HACKETTSTOWN TRUE VALUE CENTER, PRO AUTOMOTIVE WAREHOUSE & ROBERT POYER

Complainant filed a verified complaint with the Division alleging that the respondents subjected her to hostile work environment sexual harassment and discharged her based on her sex, all in violation of the LAD. After completing its investigation, the Division issued an agency determination finding probable cause to support Complainant's allegations of a sexually hostile work environment, but finding no probable cause to support Complainant's allegations that she was terminated from her employment based on her sex. Accordingly, the discharge claim was dismissed, and the harassment claim was transmitted to the Office of Administrative Law for a hearing. Following the hearing, the ALJ issued an initial decision concluding that Respondent Robert Poyer, owner of Hackettstown Auto Parts, Hackettstown True Value Center, and Pro Automotive Warehouse, as well as Complainant's direct supervisor,

subjected her to comments, gestures and conduct that a reasonable woman would have found sufficiently severe or pervasive to render the workplace hostile and abusive. Based on Complainant's testimony regarding the emotional distress caused by the hostile work environment, the ALJ awarded her \$20,000 in compensatory damages. The ALJ also imposed a statutory penalty of \$10,000 against each Respondent.

The Director adopted the ALJ's determination that Complainant was subjected to a sexually hostile work environment, and that the evidence supported an award of \$20,000 in emotional distress damages. However, the Director modified the ALJ's statutory penalty award, concluding that the facts of this case warranted imposing a single \$10,000 penalty, for which all four Respondents were jointly and severally liable.

DCR Docket No.:
EW-8WB-44055-E**OAL Docket No.:**
CRT 1429-02**D.O. Issued:**
September 2003**ROBERT WARE v. COUNTY OF MERCER**

Complainant filed a verified complaint with the Division alleging that Respondent discriminated against him on the basis of his disability, loss of an eye, when Respondent refused to hire him as a County Corrections Officer. Complainant has a right eye prosthesis as a result of an injury that occurred when he was 15 years old. On December 4, 2002, the ALJ issued an initial decision granting Complainant's motion for partial summary decision. On September 4, 2003, the ALJ issued a second initial decision awarding Complainant damages for back pay with interest and assessing a statutory penalty against Respondent for violating the LAD.

On October 20, 2003, the Director issued an order affirming the ALJ's conclusion that Respondent acted unreasonably in determining that Complainant could not perform the

Corrections Officer position because of his disability. Specifically, the record revealed that, subsequent to his rejection, Complainant was examined by the Merit System Board's Medical Examiner's Panel which concluded that because he had normal vision in his left eye, Complainant could adequately perform the job without posing a substantial risk of serious injury to himself or others. Regarding damages, the Director adopted the ALJ's conclusion that the record supported an award of back pay, interest, damages for pain and humiliation, and a statutory penalty. Respondent has appealed this decision

DCR Docket No.:
EL311HK-40837-E**OAL Docket No.:**
CRT 6754-01**D.O. Issued:**
October 2003

BRANISLAVKA LUKIC v. KRIVAJA BEECHBROOK CORP.

Complainant filed a verified complaint alleging that Respondent, a U.S. corporation which was a subsidiary of a corporation based in the former Yugoslavia, discriminated against her and terminated her employment based on her national origin (Serbian), in violation of the LAD. Complainant contended that after internecine war broke out in the former Yugoslavia, her employer systematically terminated almost all employees of Serbian origin. The employer denied that national origin played any role in its decision to discharge Complainant, and asserted that (1) the war caused a decline in its business; (2) there was no longer enough work to justify employing Complainant on a full time basis; and (3)

Complainant refused to accept a part-time schedule. Following an administrative hearing, the ALJ dismissed the complaint, concluding that Complainant failed to establish by competent credible evidence that Respondent terminated her because of her Serbian origin, or that her employer systematically terminated Serbian employees, replaced them with non-Serbs or treated similarly situated non-Serbian employees more favorably based on their national origins.

The Director found that the ALJ's conclusions were supported by the evidence in the record, and adopted the recommendation to dismiss the complaint.

DCR Docket No.:
EB62NB-36301-E**OAL Docket No.:**
10369-99**D.O. Issued:**
October 2003**CLARA SHOCKLEY v. R&R TRAA COMPANY AND B&R TRAA ENTERPRISES**

Complainant filed a verified complaint alleging that Respondents, doing business as a McDonald's franchise, violated the LAD when two co-workers subjected her to hostile environment sexual harassment. Complainant contended that the two co-workers subjected her to sexually offensive comments and gestures, and impermissibly touched her during her four years of employment. Respondents asserted that on the two occasions when management was made aware of the harassing conduct, the employees were disciplined consistent with the company's sexual harassment policy. Following an administrative hearing, the ALJ found that although Complainant was subjected to a sexually hostile work environment, Respondents were not liable under the LAD because Respondents took prompt remedial action on both occasions that they were made aware of the harassing conduct.

The Director found that the ALJ's conclusions were supported by the evidence, and adopted the ALJ's recommendation to dismiss the complaint. However, the Director rejected the ALJ's conclusion that the so-called Ellerth/Farragher defense was available to Respondents in this case since Complainant's allegation was that co-workers, not supervisors, engaged in harassment. Instead, the Director relied on the standards enunciated by the New Jersey Supreme Court in *Lehmann v. Toys 'R' Us, Inc.* Applying these standards, the Director concluded that Respondents were not liable based on a negligence theory of liability because Respondents had implemented an effective procedure for preventing and eliminating harassment in the workplace, and took prompt, effective action to correct the harassing conduct on the two occasions Respondents were made aware of it.

DCR Docket No.:
EE06WB-41629-E**OAL Docket No.:**
CRT 2759-99**D.O. Issued:**
November 2003

MUHAMMAD v. NEW JERSEY DEPARTMENT OF CORRECTIONS

Two complaints comprised this consolidated matter. In the first, Complainant alleged that Respondent's Mountainview Youth Correctional Facility subjected her to differential treatment and harassment based on her creed (Muslim) in violation of the LAD. This complaint was later amended to allege other acts of discrimination including termination based on creed, race (Black), and sex (female). The second complaint alleged differential treatment, harassment, and termination by Respondent's Newark House facility based on sex and creed, and as an unlawful reprisal for filing the first complaint.

In his order, the Director adopted the ALJ's ruling which granted Respondent's motion for summary decision and dismissed Complainant's Newark House complaint. The Director also adopted the ALJ's initial decision in this matter in which the ALJ concluded, after a hearing, that Complainant was not entitled to damages in connection with any allegations in her Mountainview complaint as amended.

DCR Docket No.:
EG14WG-37260-E;
EK05CG-30462

OAL Docket No.:
CRT 7015-98;
CRT 9270-99

D.O. Issued:
December 2003